

To: Finance & Personnel Committee  
Association of Bay Area Governments

Fr: Kenneth Moy  
Legal Counsel

Re: SCAG – *Amicus* Brief Request

Dt: August 28, 2008

#### BACKGROUND AND ANALYSIS

The council of governments responsible for conducting the Regional Housing Needs Allocation process (RHNA) in the Southern California region is the Southern California Association of Governments (SCAG). At the completion of SCAG's RHNA, three cities within the SCAG region – Palmdale, La Mirada and Irvine filed suits challenging their allocations.

The trial court decided the matter in favor of SCAG. It concluded that the current Housing Element Law (Law) does not permit local governments to challenge their RHNA allocations in court. The court based its holding on finding that the 2004 revisions to the Law: deleted a provision explicitly allowing local governments to challenge their allocations in court, provided new and expansive outreach, public comment, revisions and appeals processes and provided for a judicial challenge to the Department of Housing and Community Development's (HCD's) certification, or non-certification, of the local government's revised housing element. The cities have appealed the decisions.

SCAG has asked ABAG to file an *amicus* brief in support of SCAG.

I have reviewed the trial court decision, conferred with SCAG's General Counsel and ABAG staff, and reviewed my workload for the pertinent time period (mid – October to mid – November). In my opinion, the trial court decision is legally sound, benefits ABAG in its capacity as the implementer of RHNA for the Bay Area, and does not disadvantage ABAG members in the aggregate. I can accommodate the request within my current workload.

#### RECOMMENDATION

Recommend to the Executive Board that I be authorized to file an *amicus* in support of the Southern California Association of Governments (SCAG) in the matters of La Mirada v SCAG and Irvine v SCAG.

The item will be placed on the Executive Board Consent Calendar but will be deleted if F&P does not adopt the above recommendation